IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 19433 of 2007(L)

AGAINST THE ORDER IN IA. 162 /2007 IN OS.120/2005 of PRL.MUNSIFF, KASARAGOD
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PETITIONER:

G.P.ABDULLA, S/O PAKRABBA, RESIDING AT GUNAJE, MAIRE VILLAGE, KASARAGOD TALUK, KASARAGOD DISTRICT, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER, G.P.MOIDEENKUTTY, S/O PAKRABBA, RESIDING AT GUNAJE, MAIRE VILLAGE, POST ARIYAMPADY, KASARAGOD TALUK.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE
SMT.O.K.SANTHA

RESPONDENS:

P.N.PRABHAKARAN, S/O P.K.NARAYANA ACHARI RESIDING AT THEKKEPARAMBIL, PERAKAM, POOKOD VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT, P.O.PERAKAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 19433 OF 2007

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Dated this the 26th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash the order in I.A.162/07 in O.S.120/05. The petition was one for amendment of the written statement. The basic facts that are necessary for the disposal of the writ petition are as follows.

2. The suit is one for a permanent prohibitory injunction and the plaintiff claims right over the property by virtue of an assignment deed dated 27-6-69 in L.A. 53/Maire/68. The defendant entered appearance and filed a written statement wherein he admits that the property was assigned in favour of the plaintiff as per the said document and later in paragraph 8 of the written statement it was further stated, "Thereafter the plaintiff sold the said property to the defendant, as per the registered sale deed dated 30-1-99 and put the defendant in possession of the same which is shown in X schedule below". So the contention of the

defendant is to the effect that the property belong to the plaintiff and the plaintiff by virtue of an assignment deed in the year 1999 had transferred it to him and thereby he is entitled to the property. In order to resolve the dispute the document was send for examination of an expert. The expert found that the said document was not signed by the plaintiff at all. Now, an application for amendment of the written statement stating that the plaintiff has impersonated and created a document, therefore such a plea should also be incorporated in the written statement. The Court below found that it is totally an inconsistent plea and if it is entertained it will change the whole character of the suit and the evidence and a valuable right accrued in favour of the plaintiff will be lost. The defendant cannot be permitted to blow hot and cold in a case of this nature. He should stick on to the fundamental pleadings. Only explaining it should be entertained and not a total change. But, here he wants to cut at the root of the basic plea of him in the written

statement and it shall not be entertained and therefore the Court below was perfectly justified in dismissing the application and therefore the order does not suffer from any infirmity or irregularity. So, the writ petition lacks merit and the same is dismissed.

M.N. KRISHNAN, JUDGE.

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